

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Department of Commerce's
Formal Complaint and Request for
Commission Action

ISSUE DATE: August 7, 2006

DOCKET NO. P-442, 5243, 5934, 5681, 6287,
5656, 5936, 6144, 5542, 5981, 5720/C-05-1282

ORDER APPROVING STIPULATIONS AND
DISMISSING COMPLAINT AGAINST
AT&T

PROCEDURAL HISTORY

On December 30, 2005, the Minnesota Department of Commerce (the Department) filed a complaint alleging that certain competitive local exchange carriers (CLECs) – and AT&T Communications of the Midwest, Inc. (AT&T) in its role as an interexchange carrier (IXC) – had violated statutes and rules by conspiring to conduct business on terms inconsistent with the local carriers' tariffs.

On April 5 and 6, 2006, the Department filed stipulations and agreements signed by various local carriers. On May 19, the Commission issued an order approving these stipulations and dismissing the complaints against the stipulating parties.

On June 5, 2006, the Department filed a stipulation and agreement (Stipulation) with AT&T.

The Commission met on July 13, 2006, to consider this matter.

FINDINGS AND CONCLUSIONS

I. Complaint

The Department alleged that AT&T conspired with certain CLECs to provide AT&T with switched access to the CLECs' local telecommunications networks on terms that were inconsistent with the terms in the CLECs' tariffs, and that were concealed from regulators and other telecommunications service providers. In so doing, the Department alleged, the CLECs discriminated by knowingly and willfully charging, demanding, collecting, and receiving payments according to untariffed rates from AT&T while offering, charging, demanding, collecting or receiving different rates from AT&T's competitors. According to the Department, this practice violates Minnesota Statutes §§ 237.07, 237.09, 237.121, subdivision 4, and 237.74; and Minnesota Rules, Part 7812.2210, subparts 2, 3, 5 and 9; and Part 7810.0500, subpart 1.

The Department asked the Commission to find knowing and intentional violations of Minnesota statutes and rules, and to order parties to a penalty of up to \$55,000 for each day of violation as provided by Minnesota Statutes §§ 237.461, subdivision 2; 237.462, subdivision 3; and 237.462, subdivision 2.

II. Positions of the Parties

A. Stipulating Parties

AT&T has now signed a Stipulation with the Department. The Department indicates that it would end its investigation of AT&T if the Commission approves the Stipulation.

The Stipulation purports to resolve all complaints against AT&T with respect to switched access charges in any written agreement that has been provided to the Department. A copy of the Stipulation is attached. In summary, the Stipulation states as follows:

- In the future AT&T will pay each local exchange carrier in Minnesota according to the carrier's tariff or approved Individual Case Based (ICB) rate. AT&T agrees not to dispute a Minnesota carrier's intrastate access rates or approved ICB contract by withholding, reducing or delaying payment of such charges unless AT&T has a pending complaint implicating the payment of such charges.
- AT&T agrees not to initiate any action to enforce the concealed access charge agreements that are the subject of this docket. But this agreement does not preclude AT&T from challenging how the local carriers in this docket have calculated their access rates.
- The Department joins AT&T in asking the Commission to dismiss with prejudice the Department's complaint in this matter upon approval of the Stipulation. AT&T admits to no violation of law, rule, or Commission Order, and the Department agrees that the settlement does not imply any such violation.

B. Qwest Corporation

Qwest Corporation (Qwest) appeared at the hearing to express its interest as a potential victim of the CLECs' discriminatory rates. Qwest stated that it could not offer an opinion on this matter because it had had insufficient opportunity to review the stipulation's terms and other relevant documents. Nevertheless, Qwest declared it would not oppose the stipulation.

III. Commission Analysis and Action

A. Regarding Stipulating Parties

The Stipulation is in the nature of a settlement. Minnesota Statutes § 237.076 authorizes the Commission to accept a settlement upon a finding that it is in the public interest and is supported by substantial evidence.

The Stipulation promotes fair and open competition by assuring that all IXC's will have access to the same Commission-approved rates, whether in tariffs or ICB contracts. Such an arrangement assures that rates will be fairly available to all who meet the conditions that justify the rate. This promotes fair and open competition by limiting the power of the largest IXC's to disadvantage smaller IXC's by securing rates that reflect their negotiating power rather than characteristics that truly justify lower rates.

The Commission has no wish to discourage telecommunications providers from negotiating mutually agreeable terms for conducting business; the Commission merely seeks to ensure that these agreements conform to law and are otherwise consistent with the public interest. The Commission is persuaded that the proposed Stipulation – ensuring that AT&T will not seek to evade the regulatory system ensuring nondiscriminatory rates – meets these criteria.

Having reviewed the record and heard the parties' oral arguments on this matter, the Commission finds that the proposed Stipulation is in the public interest and supported by substantial evidence. Accordingly, the Commission will approve the Stipulation, require its implementation, and dismiss the Department's complaint against AT&T.

Nothing in this Order alters the Department's complaints against other carriers in this docket.

ORDER

1. The Stipulation filed in this matter on June 5, 2006, is approved and copies are attached hereto. Accordingly, the Department's complaint against AT&T is dismissed with prejudice. AT&T shall implement the stipulation according to its terms.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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STIPULATION AND AGREEMENT

between the Minnesota Department of Commerce and

AT&T of the Midwest

(June 5, 2006)